

(RCS, 1461-FPC). This matter is discussed in ER 1140-2-1.

(o) *Funding of operations under the Federal Power Act.* (1) The salaries of the Corps of Engineers personnel involved in investigations discussed herein will be charged against funds for "Special Investigations" under the appropriation for "General Expenses." The FERC may provide reimbursement if requested by the Chief of Engineers to cover the nonpersonal expenses which may be incurred in the investigation and supervision of projects under permits and licenses.

(2) Non-personal costs amounting to less than \$100 for any single investigation will not be reimbursed from the Commission funds but will be charged also to "Special Investigations" under the appropriations for "General Expenses." Each Division Engineer charged with a detailed investigation of an application for license or the supervision of a project that will require more than a nominal amount of nonpersonal costs will be specifically requested to submit an estimate of the funds required upon assignment of the work by the Chief of Engineers.

(3) Reimbursement from the FERC funds for nonpersonal costs in excess of \$100 will be made by the Chief of Engineers upon submission of a voucher on Standard Form 1080 by the District Engineer through the Division Engineer. The voucher will show the fiscal year during which the work was done and the Commission project number on which the money was spent.

APPENDIX A TO PART 221—PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

Sec.

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AUTHORITY: Federal Power Act, secs. 7(c), 14, 15, 309 (16 U.S.C. 800, 807, 808, 825h).

SOURCE: Order 141, 12 FR 8461, Dec. 19, 1947; as amended by Order 175, 19 FR 5212, Aug. 18, 1954; Order 260, 28 FR 814, Jan. 11, 1963; 28 FR 1680, Feb. 21, 1963; 28 FR 2270, Mar. 8, 1963; Order 288, 29 FR 14106, Oct. 14, 1964; Order 384, 34 FR 12269, July 25, 1969 and as otherwise noted.)

§16.1 Purpose and coverage.

This part implements the amendments of sections 7(c), 14, and 15 of part I of the Federal Power Act, as amended, enacted by Public Law 90-451, 82 Stat. 616, approved August 3, 1968. It applies to projects subject to sections 14 and 15 of the Federal Power Act including projects for which a nonpower license may be issued. Procedures are provided for the filing of applications for either power or nonpower licenses for projects whose licenses are expiring. A license for a power project issued to either the original licensee or another licensee is referred to in this part as a "new license" and a license for a nonpower project as a "non-power license". Also provided are procedures for the filing of recommendations for takeover by Federal departments or agencies and applications for renewal of licenses not subject to section 14.

§16.2 Public notice of projects under expiring license.

In order that there should be adequate notice and opportunity to file timely applications for a license the Commission's Secretary will give notice of the expiration of license of a project (except transmission line and minor projects) 5 years in advance thereof in the same manner as provided in section 4(f) of the Act. The Secretary shall upon promulgation of the rules herein give notice, as provided in section 4(f) of the Act, of all whose license terms have expired since January 1, 1968, or which will expire within 5 years of the effective date of this rule. In addition, the Commission each year will publish in its annual report and in the FEDERAL REGISTER a table showing the projects which will expire during the succeeding 5 years. The table will list these licenses according to their expiration dates and will contain the following information: (a) License expiration date; (b) licensee's name; (c) project number; (d) type of principal project works licensed, e.g., dam and reservoir, powerhouse, transmission lines; (e) location by State, county,

and stream; also by city or nearby city when appropriate; and (f) plant installed capacity.

§16.3 When to file.

(a) An existing licensee must file an application for a “new license” or “nonpower license” or a statement of intention not to file an application for a “new license” no earlier than 5 years and no later than 3 years prior to the expiration of its license, except that, where the license will expire within 3½ years of the issuance of this part, such applications or statements shall be filed within 6 months from the effective date of this part. Applicants which have applications pending which were filed under previous Commission regulations shall supplement their applications in accordance with pertinent provisions of this part within 6 months of the effective date of this part.

(b) Any other person or municipality may file an application for a “new license” or “non-power license” within 5 years of the expiration of the license, but in no event, unless authorized by the Commission, later than 6 months after issuance of notice of the filing of an application or statement by the licensee under §16.4 or 2½ years before the expiration of the license, whichever is earlier.

(c) Any application submitted after the expiration of the time specified herein for filing must be accompanied by a motion requesting permission to file late, which motion shall detail the reasons of good cause why the application was not timely filed and how the public interest would be served by its consideration.

§16.4 Notice upon filing of application.

When any timely application or statement within the meaning of §16.3 is received, or when the Commission grants any motion for consideration of a late filed application, notice of receipt thereof will be furnished the applicant, and public notice will be given in the same manner as provided in sections 4(f) and 15(b) of the Act (49 Stat. 838; 41 Stat. 1072; 82 Stat. 616; 16 U.S.C. 797, 808) §§1.37 and 2.1 of this chapter, the Fish and Wildlife Coordination Act, 48 Stat. 401, as amended, 16 U.S.C. 661 *et seq.*, and by publication in the FEDERAL REGISTER.

§16.5 Annual licenses.

No application for annual license need be filed nor will such application be accepted under section 15 of the Act. An existing licensee making timely filing for a new license will be deemed to have filed for an annual license. If the Commission has not acted upon an application by licensee for a new license at the expiration of the license terms, by the issuance of an order granting, denying or dismissing it, an annual license shall be issued by notice of the Secretary.

§16.6 Applications for new license for projects subject to sections 14 and 15 of the Federal Power Act and all other major projects.

(a) Each application for a new license hereunder shall conform in form to §131.2 of this chapter, and shall set forth in appropriate detail all information and exhibits prescribed in §§4.40 through 4.42 of this chapter, inclusive and in §4.51 of this chapter, as well as additional information specified in paragraphs (b) through (e) of this section, except that Exhibit A may be incorporated in an application by reference where one applicant files applications for several projects, one of which already contains an Exhibit A or in any case where applicant has filed an Exhibit A within 10 years preceding the filing of the application, and that Exhibits N and O as specified in §4.41 of this chapter need only be filed as provided in paragraph (c) of this section. An original and fourteen conformed copies of the application and all accompanying exhibits shall be submitted to the Commission plus one additional conformed copy for each interested State Commission.

(b) An application for a “new license” hereunder shall include a statement showing the amount which licensee estimates would be payable if the project were to be taken over at the end of the license term pursuant to the provisions of sections 14 and 15 of the Federal Power Act. This statement shall include estimates of: (1) Fair value; (2) net investment; and (3) severance damages. (This subsection is not applicable to State, municipal, or nonlicensee applicants.)

(c) If the applicant proposes project works in addition to those already under license, the maps, plans, and descriptions of the project works (Exs. I, J, L and M) shall distinguish the project works of parts thereof which have been constructed from those to be constructed. Exhibits N and O shall also be included in the application relating to new construction.

(d) Applicant shall furnish its plans for the future modification or redevelopment of the project, if any, and shall set forth in detail why technically feasible, additional capacity is not proposed for installation at the time of relicensing.

(e) Applicant shall file a statement on the effect that takeover by the United States or relicensing to another applicant would have upon the supply of electric energy to the system with which it is interconnected, the rates charged its customers, the licensee’s financial condition, and taxes collected by local, State, and Federal Governments. (This subsection is not applicable to State, municipal or nonlicensee applicants.)

§16.7 Application for nonpower license.

Each application for “non-power license” shall generally follow the form prescribed in §131.6 of this chapter, except for subsections 7 and 8 thereof. It shall be accompanied by

Exhibits K, L, R, and S prepared as described in section 4.41, and shall include the information specified in paragraphs (a) through (c) of this section. Unless otherwise specified, an original and 14 conformed copies of the application and all accompanying exhibits shall be submitted with one additional conformed copy for each interested State commission. Additional information may be requested by the Commission if desired.

(a) Applicant shall furnish a description of the nonpower purpose for which the project is to be utilized and a showing of how such use conforms with a comprehensive plan for improving or developing a waterway or waterways for beneficial uses, including a statement of the probable impact which conversion of the project to nonpower use will have on the power supply of the system served by the project.

(b) Applicant shall identify the State, municipal, interstate or Federal agency, if any, which is authorized or willing to assume regulatory supervision over the land, waterways and facilities to be included within the nonpower project. (If there is such an agency, applicant shall forward one copy of the application to such agency.)

(c) Applicant shall submit a proposal for the removal or other disposition of power facilities of the project.

A "non-power license" shall be effective until such time as in the judgement of the Commission a State, municipal, interstate, or Federal agency is authorized and willing to assume regulatory supervision over the land, waterways, and facilities included within the "non-power license" or until the project structures are removed. Such State, municipal, interstate or Federal agency may petition the Commission for termination of a "non-power license" at any time. Where the existing project is located on the public lands or reservations of the United States, and there is no application for relicensing as a power project either by the original licensee, or some other entity, or a takeover recommendation, the Commission may, in its discretion, and upon a showing by the agency having jurisdiction over the lands or reservations that it is prepared to assume requisite regulatory supervision for the nonpower use of the project, terminate the proceeding without issuing any license for nonpower use.

§16.8 Departmental recommendations for takeover.

A recommendation that the United States exercise its right to take over a project may be filed by any Federal department or agency no earlier than 5 years and no later than 2 years prior to the expiration of the license term; *Provided, however,* That such recommendation shall not be filed later than 9 months after the issuance of a notice of application for a new license. Departments or

agencies filing such recommendations shall thereby become parties to the relicensing-takeover proceeding. An original and 14 copies of the recommendation shall be filed together with one additional copy for each interested State commission. The recommendation shall specify the project works which would be taken over by the United States, shall include a detailed description of the proposed Federal operation of the project, including any plans for its redevelopment and shall indicate how takeover would serve the public interest as fully as non-Federal development and operation. It shall also include a statement indicating whether the agency making the recommendation intends to undertake operation of the project. A copy of the recommendation shall be served upon the licensee by the Commission's Secretary. Any applicant for a new license covering all or part of the project involved in the takeover recommendation shall have 120 days within which to serve a reply to the recommendation upon the Commission with copies to any parties in the proceeding.

§16.9 Commission recommendation to Congress.

If the Commission, after notice and opportunity for hearing, concludes upon departmental recommendation, a proposal of any party, or its own motion, that the standards of section 10(a) of the Act would best be served if a project whose license is expiring is taken over by the United States, it will issue its findings and recommendations to this effect, and after any modification thereof, upon consideration of any application for reconsideration, made in conformity with the provisions of §1.34 of this chapter governing applications for rehearing, forward copies of its findings and recommendations to the Congress.

§16.10 Motion for stay by Federal department or agency.

If the Commission does not recommend to the Congress that a project be taken over, a Federal department or agency which has filed a timely recommendation for takeover as provided in this part may, within thirty (30) days of issuance of an order granting a license, file a motion, with copies to the parties in the proceeding, before the Commission requesting a stay of the license order. Upon the filing of such a motion, the license order automatically will be stayed for 2 years from the date of issuance of the order, unless the stay is terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission will notify Congress of any such stay. Upon expiration or termination of the stay, including any extension thereof by act of Congress, the Commission's license order shall automatically become effective in accordance with its terms. The Commission will notify Congress of each license order

which has become effective by reason of the expiration or termination of a stay.

§16.11 Procedures upon congressional authorization of takeover.

A determination whether or not there is to be a Federal takeover of a project would ultimately be made by Congress through the enactment of appropriate legislation. If Congress authorizes takeover, the Secretary will immediately give the Licensee not less than 2 years' notice in writing of such action. Within 6 months of issuance of such notice the Licensee shall present to the Commission any claim for compensation consistent with the provisions of section 14 of the Federal Power Act and the regulations of the Commission.

§16.12 Renewal of minor or minor part licenses not subject to sections 14 and 15.

Licenses whose minor or minor part licenses are not subject to sections 14 and 15 of the Act and wish to continue operation of the project after the end of the license term shall file an application for a "new license" 1 year prior to the expiration of their original license in accordance with applicable provisions of part 4 of this chapter.

§16.13 Acceptance for filing or rejection of application.

Acceptance for filing or rejection of applications under this part shall be in accordance with the provisions of §4.31 of this chapter.

APPENDIX B TO PART 221—FEDERAL ENERGY REGULATORY COMMISSION
FORM L-3 (REVISED OCTOBER 1975)

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided, however,* That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity

with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgement have produced or will produce any of such results shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and projects works in the performance of their